

**OFFICE OF THE
FARMERS' ADVOCATE
OF ALBERTA**

**ANNUAL REPORT
2003**

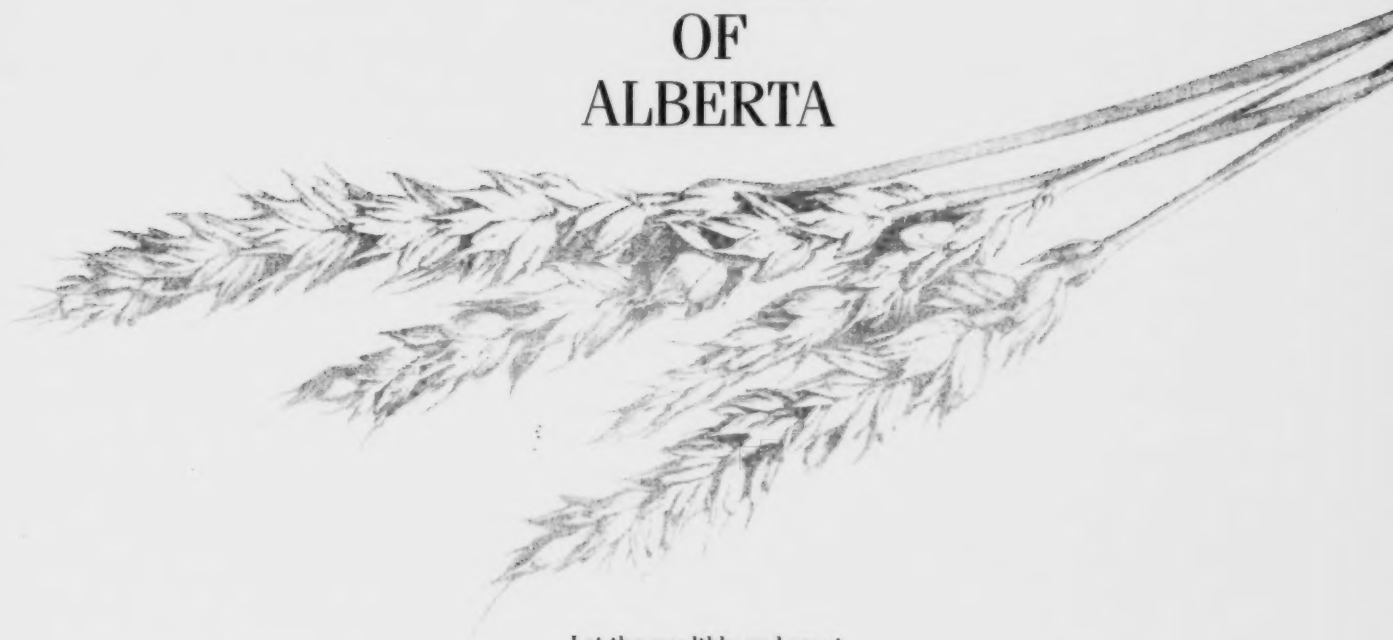


"Celebrating 30 Years of Service to Rural Albertans"

Alberta
AGRICULTURE, FOOD AND
RURAL DEVELOPMENT
Farmers' Advocate



THE FARMERS' ADVOCATE OF ALBERTA

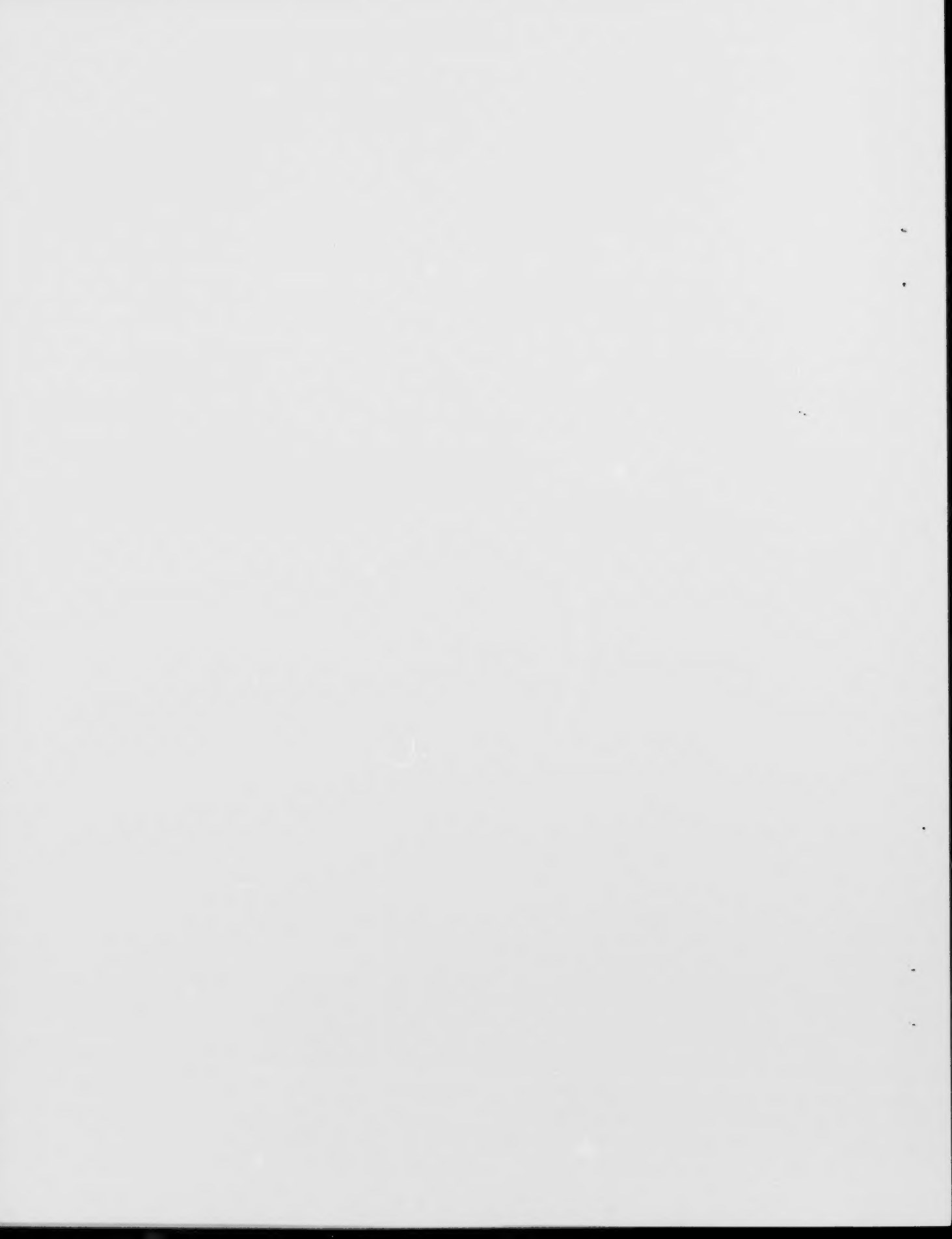


Let the wealthy and great
Roll in splendor and state
I envy them not; I declare it.

I eat my own lamb
My chickens and ham
I shear my own fleece and I wear it.

I have lawns. I have bow'rs
I have fruit, I have flow'rs
The lark is my morning alarmer.

So jolly Boys now
Here's God speed, the Plough
Long Life and Success to the Farmer.





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PREFACE

Our annual report is prepared to provide a general insight to the workings of the Farmers' Advocate Office.

In response to feedback and interest expressed to us, we report on the focus of the office and provide some detail of cases we have addressed.

The year 2003 was significant as it marked 30 years since Dr. Hugh Horner, then Minister of Agriculture, had a vision and created the Office of the Farmers' Advocate of Alberta. At that time, rural gas co-operatives were forming, the petroleum industry was experiencing accelerated growth and landowners were faced with a myriad of new situations that had the potential to impact their lives and livelihood. The Farmers' Advocate was appointed to assist the farmers in dealing with developments beyond their wildest dreams.

Thirty years later the mandate of the office remains unchanged. The Farmers' Advocate, five assistants and two support staff, make up a team that helps rural Albertans understand their rights and responsibilities as landowners.

2003 will go down as a year of great challenge to agriculture. The first diagnosis of Bovine Spongiform Encephalopathy (BSE) in Canada came from an Alberta cattle herd. An international ban on the import of Canadian beef, after several years of drought, caused havoc in the livestock industry.

Although not directly involved with the BSE crisis, the Farmers' Advocate Office certainly experienced increased demands on its resources. In particular, it worked closely with various agencies addressing the area of mental health and the stresses on our livestock producers.

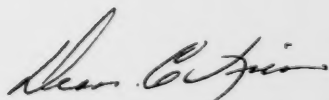
On a more positive note, the year also witnessed significant changes to the *Farm Implement Act* that we administer. The creation of a compensation fund now replaces bonding requirements for dealerships and distributors. This modification provides similar protection to the industry at less cost than applying for bonding through insurance brokers. Bonds became very difficult to acquire because of the demand for personal guarantees and skyrocketing premiums created by 9-11.

The other administrative developments included the completion of the first practice review committee hearing under the nuisance portion of the *Agricultural Operation Practices Act*. In addition, we administer the Wild Fire Cost Assessment Review Committee for Alberta Sustainable Resource Development and chair and administer the Water Well Restoration or Replacement Program.

The large volume of calls coming to the office indicates there are still questions and concerns in rural Alberta. More frequently the calls indicate a degree of frustration based on land use conflicts, low returns for agriculture, diminished markets for production and a shrinking rural population that means a weaker political voice.

It has been my honour and pleasure to serve rural Alberta as the Farmers' Advocate for the past six years. Upon my retirement in 2004, I will reflect on the extensive scope of the office. The phrase "barnyard to boardroom" certainly reflects the role of this office. I have met with farmers at their kitchen tables, walked their fence lines with them and taken their concerns to the executive offices of petroleum companies, MLAs and cabinet ministers. I have travelled to the four corners of the province and on occasion visited our neighbouring provinces. It is clear the Farmers' Advocate Office provides a valued service and I do not foresee this role diminishing. Agriculture will continue to change, farmers will still need a champion and rural life will always be the dream of many.

I personally thank Alberta's farmers and ranchers for giving me this opportunity to serve them. I also extend a thank you to my dedicated staff and to Shirley McClellan, the Deputy Premier and Minister of Agriculture, for her support of the office and her loyalty and hard work on behalf of Alberta's agricultural community.

A handwritten signature in black ink, appearing to read "Dean C. Lien". The signature is fluid and cursive, with a long horizontal stroke at the end.

Dean C. Lien
Farmers' Advocate of Alberta



JURISDICTION

The Minister of Agriculture established the Office of the Farmers' Advocate in 1973 to provide an effective mechanism for dealing with the concerns of Alberta farmers. Its primary functions are:

- information dissemination
- problem resolution
- *Farm Implement Act* and *Farm Implement Dealerships Act* administration
- *Agricultural Operation Practices Act* (AOPA) – Part 1 Nuisance
- Represents rural Albertans on multi stakeholder advisory and steering committees

The Farmers' Advocate Office (FAO) provides information and advice on a wide range of topics in response to calls received from every corner of the province. Based on the subject matter of the call, the FAO either answers the query or determines where best to obtain the answer. The office speaks to various groups on surface rights, local issues and other topics of interest to rural Albertans. In addition, the FAO produces several publications which are available through our office as a hard copy or on Ropin' the Web at: www.agric.gov.ab.ca/ministry/farmers_advocate/about.html

Dispute resolution often requires the skills of a mediator. The Farmers' Advocate and his assistants facilitate, negotiate or mediate as required or requested. When a concern involves local governments or agencies, the FAO requests information from the respective organization to advance the investigation. If justified, the FAO

encourages the appropriate body to review the circumstances in an attempt to find some resolution. The FAO is pleased with the co-operation and support it has received from local governments.

Although farmers may have a legal remedy, litigation can be an expensive, time consuming and lengthy process. The FAO may be a viable alternative. Our focus is to attempt out-of-court settlement with the opposing parties. The FAO prefers to become involved in the early stages of a dispute, when both parties are still willing to find a mutually satisfactory solution. It is outside the jurisdiction of the FAO to become involved in cases where the complainant has retained legal counsel. Further, the FAO will withdraw from any case where legal counsel is subsequently retained.

2 GENERAL COMMENTS AND ACTIVITIES

The year 2003 brought many challenges to Alberta farmers and ranchers. There were changes to several pieces of provincial legislation that affect landowners and add to their uncertainty and stress levels. After two successive years of severe drought, a cow infected with Bovine Spongiform Encephalopathy (BSE) was discovered in Alberta. This resulted in immediate border closures for live cattle. Our export market was virtually closed, leaving Alberta producers with a surplus of cattle ready for slaughter. This uncertain environment escalated the number of inquiries to the FAO. The Farmers' Advocate and staff respond to these inquiries. Some of the requests are for information only but some are detailed, complex issues that require further involvement of the Farmers' Advocate.

Surface rights and landowner/energy sector relations continue to be a primary focus of the office. Strong markets and the demand for energy have increased exploration and development activities. Landowner inquiries cover all aspects of the energy industry, from seismic access and damage, to reclamation and remediation at the end of the lease. Landowners want to ensure that long-term adverse effect is kept to a minimum, construction damage is limited and the agreements they enter into provide fair compensation.

Extraction of methane gas from coal, a new focus in Alberta for the petroleum industry, has become a major concern for landowners. It is viewed as being an intrusive operation with the possibility of

several wells per quarter section. There are many unanswered questions regarding disposition of water from this process.

The Farmers' Advocate also receives calls regarding other matters including:

- chemical damage/compensation
- damage to farm buildings
- farm equipment repair work orders
- the Farm Implement Act / Farm Implement Dealerships Act
- fence lines
- financial problems (bankruptcy)
- flooding and drainage concerns
- rural utilities (gas/water/electricity)
- groundwater (water wells)
- hail, wind and pollution
- highways, roads and railways
- insurance
- irrigation
- leases (farm, grazing and surface)
- livestock (confined feeding, animals at large, auction mart sales)
- reclamation
- rights of way (access)
- standing timber
- trespass

Every year farmers and ranchers enter into various business transactions, ranging from selling or buying hay to dealing with someone wanting access to land. While at one time a handshake would suffice to seal a contract, that is no longer the case. We live in a transient world where

companies and their employees come and go, as do landowners. With their departure, verbal agreements are forgotten and obligations not met. Every transaction that is made must have a written agreement to provide the best protection and clarity for both parties.

Amendments to the *Agricultural Operation Practices Act* (AOPA) came into effect in 2002. One purpose in amending the legislation was to allow for licensing, approving and enforcing confined feeding operations. Within this framework, the Natural Resources Conservation Board (NRCB) has the regulatory authority, with the exception of instances where complaints are of a nuisance nature. Under AOPA, Part 1 Nuisance, the Farmers' Advocate provides mediation on nuisance complaints. Failing this, a practice review committee may be convened to determine if an operator is using generally accepted agriculture practices. Practice review committee members are operators that have hands on experience, are knowledgeable about their industry and can provide positive direction to satisfy the complaint. The past year saw the first meeting of a practice review committee, convened at the request of the NRCB. In this instance the NRCB determined that the operation was in compliance with its permit and referred the complaint regarding odour to the Farmers' Advocate.

The Farmers' Advocate administers the *Farm Implement Act* and the *Farm Implement Dealerships Act*. The *Farm Implement Act* was amended to make changes in the way farm implement dealers and distributors indemnify their customers. The new legislation eliminates the bond requirement needed to qualify for a license in Alberta. Dealers and distributors are now required to pay annual levies into a newly created compensation fund. The new fund ensures farmers are better protected and that farmers, dealers and distributors in the farm implement business are treated fairly.

When the Farmers' Advocate goes into the rural community to meet with farmers and ranchers, water concerns are at the top of the agenda. Water shortage and water contamination are on everyone's mind. As stewards of our most precious resource, it is important that everyone plays a role in ensuring the safety of our ground and surface water. The province is reviewing the use and allocation of water through stakeholder consultation. Any potential for contamination must be minimized. Water wells damaged by seismic or energy activity must be brought back to satisfactory condition by special treatment or the drilling of new wells. An application to the Water Well Restoration or Replacement Program, chaired by the Farmers' Advocate, can be made when a well has been damaged through energy activity and the company is unwilling to settle.

As an autonomous body, the Farmers' Advocate can act in a neutral and unbiased manner. This is evidenced in our involvement with AOPA, the Water Well Restoration or Replacement Program and the Wildfire Cost Assessment Review Committee. This new committee, under Alberta Sustainable Resource Development, looks at costs billed to farmers for fire fighting activities carried out by the Forestry Service.

The energy industry in Alberta is over 50 years old. Landowners with surface leases that have reached their fiftieth year have inquired about the status of the lease. Their question is, "Are they expired?" Our answer is, "It depends on the termination clause in the lease." Some expire at 50 years and others extend for another 25 years. Reviewing the lease will determine its date of expiry.

In past years, agricultural producers who held grazing dispositions were able to deny or allow access requests for recreational purposes or seismic activity. The *Agricultural Dispositions Statutes Amendment Act* passed in 2003, governs access for exploration and recreational access. In order to promote multiple use on crown land, holders of grazing dispositions can no longer deny reasonable access. A dispute resolution process is in place to avoid conflict should a grazing leaseholder say no to access for geophysical exploration or recreational purposes.

Over the past year the FAO staff have travelled throughout the province meeting with individuals, community groups and agriculture stakeholder groups to share and provide information. The emergence of synergy groups in energy communities attests to the interest of landowners and industry to work together. The Farmers' Advocate encourages landowners to participate in local organizations so they can become knowledgeable about what is happening in their area. With so much energy activity in the province, information sharing prepares landowners for when land agents come knocking at their door.

3

EXTERNAL ACTIVITIES OF THE FARMERS' ADVOCATE

Many individuals who contact our office are not aware that the Farmers' Advocate serves the rural community in ways other than directly working with landowners. The Farmers' Advocate, on a regular basis, is requested to sit on steering and/or advisory committees commissioned by regulatory agencies, government departments or energy and agricultural organizations. It is not unusual for the Farmers' Advocate to be asked by an organization or a municipality to assist them in settling a difficult situation by making an arbitrary decision. This externally focused function of our office allows the rural perspective to be shared with decision makers to influence policy and/or legislative changes.

The FAO represents the rural community on the following committees:

Provincial Rural Crime Watch Association

The Farmers' Advocate was one of four founding members of the Rural Crime Watch Program. The other three members were the Western Stock Growers Association, the Alberta Cattle Commission (Alberta Beef Producers) and the Royal Canadian Mounted Police. The name of the association spells out its mandate, which is to prevent crime in rural Alberta. The founding members worked with the group to form a provincial association. Today, the Farmers' Advocate is a member of the provincial association and continues to provide support and assistance when requested. Currently, there are 93 local crime watch groups in the province,

representing 22,000 households (73,000 members). In addition to many local initiatives, the provincial association holds an annual meeting and training workshop that is hosted by one of the groups. The local crime watch groups and provincial association are doing a great job in their communities to promote crime prevention.

Land Agent Advisory Committee

This committee makes recommendations to the Minister regarding all aspects of land agent licensing. Committee membership consists of representatives from major surface land acquisition companies, agriculture and energy industry stakeholder groups, individual landowners, land agent associations, government representatives and the Farmers' Advocate. A key teaching tool used in the Land Agents Licensing Program at Olds College is a reference manual for land agents. The Farmers' Advocate sat on the sub-committee responsible for revising this manual.

Alberta Pipeline Environment Steering Committee

This committee consists of representatives from the pipeline industry, the agriculture industry, and the federal, provincial and municipal government regulatory agencies. All pipeline concerns, including possible legislative or regulatory changes, are discussed at this table. Recommendations flow out of the discussions to the appropriate bodies.

Oil and Gas Reclamation and Remediation Advisory Committee

The process for issuing reclamation certificates for upstream oil and gas sites changed on October 1, 2003. An advisory committee, consisting of energy industry representatives, landowner representatives and government regulatory representatives, has been struck to make recommendations on outstanding issues that will make the new program effective for all stakeholders.

Alberta Energy and Utilities Board Appropriate Dispute Resolution Program

The Farmers' Advocate was a member of the working group that established this program. The program is structured to allow companies and landowners a venue to resolve issues through a mediation process rather than an arbitrary process. It has proven to be successful and has reduced the number of applications to the Energy and Utilities Board.

Alberta Energy and Utilities Board Guide 50 Review Committee

Guide 50 deals with drilling waste disposal regulations. This committee was struck to undertake an intensive review of the present regulations surrounding disposal of drilling waste products. A science-based approach has been used to ensure drilling waste material meets environmental requirements for disposal. The

committee review is complete and a report outlining recommendations is anticipated for release in 2004.

Alberta Trailnet Advisory Council

Alberta Trailnet was gifted recreational corridor land by the Trans Canada Trail Foundation. The council was formed to work with stakeholder interest groups to implement a plan for construction, use and monitoring of recreation trails throughout Alberta. The Farmers' Advocate provides guidance and input with respect to impacts of the trail on neighbouring lands.

Industry Landowner Relations Committee (ILOR)

ILOR was born as a result of several negative incidents in the oil patch. The mandate of the committee is to be proactive rather than reactive and look for ways that industry can do its work with less impact on agricultural land. The committee acts as a clearinghouse for information and ideas, with stakeholder representatives taking this information back to their respective organizations for discussion and deliberation. Several initiatives have come out of this committee. A significant one is the support of synergy groups throughout Alberta. Over the last two years synergy groups located in communities have worked with energy companies operating in their area to promote ongoing discussions to share information and address problem areas. Another

initiative was spearheaded by a geophysical association. It promotes training and education for geophysical contractors and their field staff.

Joint Government/Industry/Geophysical Steering Committee

This committee is made up of stakeholders who have an interest in geophysical operations in Alberta. Membership consists of representatives from geophysical contractors, the forest industry, the energy industry, the landowner community, regulatory agencies, and municipal and provincial government departments that administer legislation, regulations and by-laws. The Farmers' Advocate sits on a sub-committee that is preparing a course and reference manual to be used in training geophysical permit agents. As the geophysical industry is often the first contact energy has with landowners, it is important to the industry to make a good first impression. A good understanding of this role will help set the tone for future relationships with landowners. The geophysical industry has established certified training programs for their contractors, which has provided confidence for landowners and surety for industry.

Contaminated Sites Stakeholder Advisory Committee

Contaminated sites legislation was last reviewed in 1993. The department responsible for administering this legislation decided it was time

to review the existing legislation. A multi-stakeholder advisory committee was formed to review and, if necessary, develop recommendations for updating contaminated sites legislation and policy in Alberta.

Advisory Committee On Water Use Practice And Policy

Albertans have expressed concern about the use of water to assist in oil recovery. Of particular concern is the loss of water from the generally understood water cycle.

An advisory committee was established to provide advice and recommendations for a long-term water strategy. The Farmers' Advocate is part of the development committee. The committee will present a guideline for long-term changes that are designed to improve our overall water conservation. The committee investigated present uses, sources, alternative water sources (saline) and alternative methods of extraction.

4

SURFACE RIGHTS

Surface access and related landowner concerns continue to increase as the demand for new sources of energy escalates and industry advances to meet those demands. This additional activity in rural Alberta prompts landowners who are concerned about their rights to contact the Farmers' Advocate Office. Some of the concerns raised are:

- a lack of respect for the landowner and their land
- poor communication on the part of the operator
- contamination or loss of water
- failure to resolve concerns in a timely manner
- non-compliance of special terms and conditions in the agreement
- no recognition that farming is more than a business – it's a way of life
- no concern for off lease activity or damage
- devaluation of land

Applications to the Alberta Energy and Utilities Board (AEUB) for well site licenses, pipeline permits and other related facilities numbered approximately 36,000 in 2003. This was the busiest year since 2001, when the AEUB received 30,000 applications. Most of these applications are for new activity, however some are for changes or additions to existing facilities.

The AEUB, the regulatory agency for energy activity, has established an extensive dispute resolution framework for landowner consultation and facilitation. The board also provides facilitation at the local field office level should a landowner have concerns about location or safety of a well site, pipeline or other energy facility.

The Farmers' Advocate receives many inquiries regarding offers made to them for surface access. It is important for landowners to know that they do have the right to negotiate a surface lease with the company. The Farmers' Advocate recommends landowners consider several factors prior to signing a surface lease or a right-of-way agreement. Some of these are:

- Don't sign a waiver giving up your 48 hour time period to review the material provided by the company.
- If you are not happy with the location, you can negotiate a change in location with the company.
- Read each clause in the lease. If you don't understand the intent, ask the land agent to explain it. Clauses can be amended, added or deleted during negotiation with the company. Both parties must initial every change at the time of negotiation. Once signed, unless the company agrees to make changes, the lease is valid until the company releases it.
- Negotiate appropriate compensation.

RECLAMATION

For many years reclamation certificates were issued following a site inquiry for upstream oil and gas facilities. These facilities included well sites, batteries and pipelines on private or public land. The inquiry was a formal process involving the company, the landowner and a reclamation inspector. The parties met and determined if the characteristics of the site measured up the reclamation criteria. If the site met the criteria, a reclamation certificate was issued. Since 1996, inquiries have not been required in the Green Area (forested) in order for a certificate to be issued.

After consultation with landowners, industry and other stakeholders a new program was initiated for the issuance of reclamation certificates on private and public land. The program has been expanded to include specific requirements for the assessment and remediation of contamination. Applications submitted after October 1, 2003 will not be subject to a site inquiry. All applications will receive a thorough administrative and technical review. Applications that pass this comprehensive review will be issued a reclamation certificate. Landowners may appeal any reclamation certificate issued.

Companies are required to provide landowners/occupants with copies of all reclamation and remediation information. A landowner complaint process is available and landowners/occupants can forward a complaint at any time during the

reclamation/remediation process, or even after reclamation of a site. Reclamation certificates may be cancelled after a complaint if the site does not meet criteria.

Approximately 15 per cent of all sites certified under the new program will be audited. These sites will be thoroughly inspected. Intrusive sampling, along with lab analysis will assist in determining if the site was reclaimed according to reclamation/remediation criteria. If an audited site fails the criteria the reclamation certificate will be cancelled. Sites that were certified under the old program will not be audited.

A stakeholder committee, which includes a member from the FAO, has been formed to resolve outstanding issues.

The new program will be reviewed annually to ensure effectiveness and to allow opportunities for improvement.

SYNERGY GROUPS

The emergence of synergy groups in energy communities has increased over the past year. This growing interest is probably due to concerns landowners have with the potential environmental impact on their communities. There is a need to establish good relationships with all involved parties to better understand each other's position. Together they can work to avoid 'happenings' in their respective areas.

COAL BED METHANE

Exploration and development of natural gas in coal has come to Alberta. Test projects are currently in place to determine the viability of developing this resource. For landowners, it has created uncertainty about increased disturbance to their land. Extracting gas from coal requires reduced spacing of wells and connecting pipelines. The Province of Alberta is reviewing the development of natural gas in coal and a public consultation process is being developed to review the existing legislation. At the present time the status quo exists for surface access and acquiring licenses for development.

Seismic operations cannot be conducted on deeded (private) land without the consent of the person having lawful possession of the land or that person's agent. Effective July 10, 2003, if access is required for exploration purposes on leased agricultural public land and consent of the occupant is denied, the operator can appeal to local government staff for facilitation. If agreement is not reached at this level, the operator can apply to the Surface Rights Board if the dispute concerns compensation. If it is an operational concern, the operator can appeal to the exploration dispute resolution process.

SEISMIC

Seismic activity usually increases with the demand for new sources of energy. The permit agent is often the first contact for industry and the relationship established during the geophysical operation may establish the working relationship for the energy company that follows. Recognizing the importance of this initial contact, representatives of the geophysical industry are working with government to develop a permit agent's course. This is one more step industry has taken to improve landowner relations.

6

LEASING MINERAL RIGHTS

The emergence of the Freehold Minerals Association several years ago has been of great value to freehold mineral owners. Information workshops have been held in the province. These meetings have been well attended. The FAO answers inquiries about mineral leasing, but encourages owners of mineral rights to become members of the Freehold Mineral Owners Association to become better informed.

MYTH – *Mineral rights revert to the Crown upon the demise of a mineral owner.*

FACT – *Mineral rights are considered to be real property, just like land, and as such can be given away, sold, traded or willed to heirs.*

7 WATER WELL RESTORATION OR REPLACEMENT PROGRAM (WWRRP)

In 1987, the Water Well Restoration or Replacement Program (WWRRP) was implemented to provide reimbursement to landowners who have replaced or restored water wells that were allegedly damaged by energy activity. The program is funded by the energy industry through levies paid to the Alberta Energy and Utilities Board (AEUB).

A committee, chaired by the Farmers' Advocate, reviews applications and interviews landowners/occupants regarding their water well concern. A local agriculture development committee member and a water technician form the balance of this committee. A technical review of the affected well is conducted by a geophysical inspector and/or a water well technician. This information is then forwarded to the committee. If it is determined by the committee that the applicant's well was damaged by seismic or oil and gas activity, the landowner may be reimbursed for restoring or replacing the water well.

In an attempt to reduce conflict, the energy industry has been pro-actively testing water wells prior to and after conducting its activities. The FAO handled 21 applications to the WWRRP in 2003.

8

FARM MACHINERY

The *Farm Implement Act* protects farmers by ensuring access to restitution in the event that a dealer or distributor does not honour warranties or other obligations made via contractual agreement. Historically, dealers and distributors were bonded, and these bonds provided that restitution provision in the event that a settlement could not be mediated or negotiated.

For many years, the bonds were \$25,000. Recent claims on those bonds highlighted the need to increase the limits to reflect current machinery valuations. On January 1, 2003, bond values were increased to \$50,000 for dealers and \$100,000 for distributor/manufacturers. Almost immediately after the new bonding rates were in effect, the insurance industry reacted by charging higher premiums than expected and tightening the qualifications for bonding by requesting financial statements and personal guarantees from silent partners, spouses, and in some cases, relatives. These changes were partially due to the 9-11 disaster.

This was a recipe for failure and guaranteed that almost 25 per cent of dealers and distributors could not qualify or could not afford bonding. Therefore, the Alberta Government, with the advice of the Farm Implement Board, fast-tracked new legislation for January 1, 2004, to create a statutory compensation fund. Dealer and distributors contribute to this fund at a rate considerably less than the bonding premiums, without the requirement of financial qualification or personal guarantee. This alternative has been a welcome relief to the industry, while providing the same level of protection to the farming public.

9

CASE SUMMARIES

IRRIGATION PIPELINES CROSSING GAS PIPELINES

A southern Alberta farmer was installing an underground water delivery pipeline to his centre pivot and was forced to cross three high-pressure gas pipelines. Due to potential freezing problems with water left in the lines, the pipeline had to be installed below the gas lines. Because of the right of way agreement with the petroleum company, any development around the gas lines is subject to approval and specific conditions.

For safety reasons, this situation required utilizing high pressure/vacuum trucks within close proximity to the gas lines. The landowner's concerns were the petroleum company granting permission and the high cost of a vacuum truck at approximately \$250 per hour.

The landowner in this case felt the cost was excessive and the regulations for small development extreme.

Following many phone calls, an agreement was reached whereby the petroleum company co-operated by having personnel available to supervise the crossing and also to help with the costs.

The farmer was assisted and the relationship between landowner and the petroleum industry was improved.

DIDN'T GET WHAT YOU PAID FOR?

A fellow went to a farm auction, where an auctioneer was flogging a grain truck with a "guaranteed rebuilt" diesel engine. This fellow purchased the truck for more than he initially was prepared to pay. However, the rebuilt engine justified the price.

You guessed it. The truck didn't even make the 15 km to get it to its new home. When confronted, the auctioneer refused to refund the purchase price, claiming he was merely the agent for the consignor. The consignor was not willing to refund the money either, maintaining that the engine truly had been rebuilt.

Subsequent inspection of the engine determined it was recently patched. Neighbourhood gossip pointed to the local oil change outlet, where the proprietor had been heard telling friends at the auction to avoid this truck because the engine was falling out. Armed with this information, negotiations commenced with the consignor. As it turns out, the engine really had been rebuilt about 200,000 kilometres ago.

WHAT DOES THIS CAVEAT MEAN TO ME?

The Farmers' Advocate was contacted to help determine if there were any legal instruments against a newly purchased piece of land. A quick search through a registries office revealed numerous caveats for leases and pipeline rights-of-way. A bit more research provided detailed information on each of the instruments on title. Once they were explained the landowner was satisfied.

While this question was easily answered, it's brought to your attention because it is commonly asked and the results can cause a lot of grief for a new landowner. All too often, land is purchased without a clear understanding of what a caveat on title or a surface lease may mean to the new owner. A caveat, whether it is placed on title for a surface lease or a long-term land rental, remains with the land. This means that, if the land you purchased has been rented out, you will be responsible to fulfil the obligations of the rental agreement. If the property has a surface lease on it, you are compelled to allow access to the company so it may continue its operations. However, unless you have had the surface lease assigned from the previous owner to you, the company does not have to pay you any consideration or annual compensation. If you have a damage complaint with the company, you may not have the right to go to the Surface Rights Board for compensation review.

It is very important to understand your obligations when purchasing farmland. You might think you are saving money by not having a surface lease transfer with title, but it could be very costly in the long run.

STATUTORY WARRANTY – 100 PER CENT COVERAGE

Occasionally, we get calls about the warranty on a component of a farm implement. In this case, the farmer was informed that the manufacturer did warranty the tractor, but he had to go to the tire manufacturer to get warranty on the tires. Over the years, we have received the same complaint on radios, alternators, starters, etc. We do not encounter this problem very often, but it still does persist. The dealer and distributor/manufacturer **MUST** provide statutory warranty on the complete machine. It should be noted that extended warranty periods that are offered are usually specific to part of the implement, usually the drive train of a tractor. Be sure to read the small print.

USELESS FARMHAND

A farmer decides to replace his original 1950s tractor that is equipped with a farmhand loader with a new front-wheel unit. While shopping, he advises the young implement salesman that he wants to be able to switch his farmhand loader to the new tractor. "Will it work", he asks? The salesman says, "No problem." The sale is completed, and the tractor is delivered. It is quickly discovered that the old loader will not fit because of front wheel turning radius interference. The customer asks for his money back. It is not documented on the sales agreement that the loader must fit, and as it turns out the urban salesman had no idea what a farmhand loader was. No, there is no money back and there is no money to help adapt the useless farmhand.

COWS....THEY ALL LOOK ALIKE

A non-resident farmer contracts with a neighbour to winter his herd of unbranded black cows with no tags or discerning features. The neighbour is to winter the cows, calve them out and keep a 60 per cent share of the calf-crop. So, they added 30 black cows to a larger herd of more black cows, and that's when the problems started. The neighbour claims that the 30 black cows were missing and presumed stolen. The owner disputed that claim, saying that he recognized his 30 cows, and could point them out to anyone. We're still working on this one.

FRIENDLY HORSE SENSE

It has been stated that there are more horses in Alberta today than at the turn of the century, when they were needed. Today, most are raised for pleasure only. The rearing and marketing of expensive riding horses has become a lucrative business when pampered pedigree horses come to market.

Recently a breeder with a good reputation lost an expensive foal. However, the mare was able to nurse and care for another colt. A motherless colt was located and its breeder quickly accepted the use of the mare to nurse the colt until weaning.

The situation went well. The mare provided the necessary milk, the colt grew and everyone was satisfied until the mare, still on loan at the stable, was accidentally bred by a pedigreed stallion. The owner of the stallion then wanted title to the colt. This didn't go well with the mare's owner as he had made arrangements to have her bred to one of their world-class stallions from Europe.

This became a serious conflict to be settled through mediation or alternately the court. Finally, through contact with both parties, an agreement was reached. The mare was to return home and the offspring colt would be owned by the mare's stable. The stallion's owner received first chance to purchase the foal.

MUD SLINGING ERROR

An irate landowner contacted the FAO claiming an unauthorized company had spread what appeared to be an industrial sludge on his hay crop. On investigation it was discovered that the substance was drilling mud.

The drilling company that was working in the area was contacted and it provided the phone number of the contractor handling the land spraying of the drilling waste.

The contractor was informed by the FAO that they had sprayed waste on the wrong land. They admitted that the error was due to a new driver who inadvertently was confused as to the land location.

A meeting was arranged between the landowner and the contractor.

The FAO negotiated an excellent settlement that included a substantial cash payment, plus a guarantee of crop loss payment. The landowner was very pleased with the outcome.

WITHHOLDING PAYMENT

During times when there is a down turn in the agricultural economy, we often get complaints associated with finance contracts.

There is a misconception that withholding payments to the credit arm of a large company will get the attention of the company itself when a customer is dissatisfied with some part of his farm implement.

In this particular instance, a problem persisted all the way through the warranty period. Attempts made to repair the problem were unsuccessful. The warranty period lapsed with the repair still needed. In an attempt to get the matter resolved, the farmer withheld payment to the finance company. It came to the point where a bailiff was being sent out to repossess the farm implement. Fortunately, our office was called in prior to the seizure and we were able to get a stay on the repossession.

The problem was outlined in detail and forwarded to the service department of the manufacturer. The selling dealer was given additional help from the manufacturer to finally repair the tractor.

It should be noted that there is protection under the *Farm Implement Act* to address these types of situations. Rather than withholding payment, it is better to contact our office well in advance of the warranty expiring. Then, it is possible to address the problem.

FRIVOLOUS

Occasionally, the Farmers' Advocate receives a complaint that is frivolous. Nevertheless, when the matter is considered a potential threat to human or animal health we ensure that it is looked into.

One such case was brought to our attention by a landowner from southern Alberta. He indicated that over the years he has seen animals on his neighbour's land that were in very poor health. He alleged that some were so ill they were not steady on their feet and others were slobbering. He was concerned that these animals might be taken to the local auction market and eventually get into the food chain.

As a result of the complaint, the Farmers' Advocate referred the file to the appropriate division for investigation. Two individuals from this division, which is responsible for meat inspection in Alberta, attended the property of the complainant's neighbour. One of these individuals has over 35 years experience as a meat inspector, as well as being a rancher in the area. They viewed over 60 cattle and did not notice any signs of disease. Nor did the animals indicate any behaviour that would suggest they were diseased. All the cows were fat and the calves were fat and frisky.

No evidence was found to substantiate this allegation so the investigation was concluded as unfounded and our file was closed.

DUGOUT DILEMMA

A landowner contacted the Farmers' Advocate regarding a dugout that he and his neighbour share. A fence runs through the middle of the dugout. This is an area where water is scarce and an energy company needed water for their operations. He stated that the company had an agreement for access to water with his neighbour. He alleged that when they could not readily draw water out from his neighbour's side of the dugout they proceeded to his side of the property without permission. His concern is not that the company was on his property without permission, but that they took so much water out that he now has to find another source of water for his livestock.

The Farmers' Advocate contacted the company to see if it was willing to discuss settlement with the landowner, only to discover that this story does indeed have two sides. Apparently, the landowner's neighbour is a relative and they have some outstanding issues. Nevertheless, the company has agreed to address the concern to see if it can find a mutually acceptable solution to this dilemma.

WHO IS RESPONSIBLE?

A pipeline contractor left equipment on a farmer's land with the keys in the ignition. It was during a long holiday weekend and the farmer was away on vacation. Vandals started the equipment and dug several holes, doing surface damage.

When the farmer wanted to discuss the damage with the contractor, the contractor stated that it was not his responsibility. The RCMP was called to investigate, and they were unable to solve the problem. The FAO was called after the farmer failed to reach an agreement with the contractor or the energy company.

FAO arranged an onsite meeting between the pipeline contractor, the energy company and the landowner. It was agreed that the pipeline contractor and the energy company would share the cost of repairing the damage.

A surface lease payment was made and the areas in question were then fenced off and reseeded. The landowner was ecstatic with the settlement.

BE SPECIFIC NOT GENERIC

Both farmers and dealers have greatly improved their writing up of retail purchase agreements. In writing up an agreement on a used piece of equipment, the standard industry form states in bold print, "No Warranty unless Specified." This does not mean that warranty will not be given. Rather, it simply means that any references to warranty must be written on the contract or on a separate piece of paper and attached to the contract.

Unfortunately, there are still a few sales people using the term "field ready" to describe the condition of equipment. This term leads to problems because it is subject to interpretation. In this particular instance, steering tie rods ends that had been welded were to be replaced, or at least the purchaser had thought so. Other similar problems occurred with the same tractor. Our office suggests being very specific in this type of a deal. If necessary, open up a work order and itemize all the repairs to be done to the machine prior to it being accepted on delivery.

AN UNLIKELY DOCUMENT

A landowner contacted the FAO by phone and subsequently faxed a document to the office for our perusal and comment. The document, a surface lease, was unusual in content.

The lessee was a numbered company and was not recognizable to the office as a known energy producer. A granting clause, always the nucleus of a lease, did not give any indication of what the lease would be used for. It only quoted, "All purposes and uses as may be necessary and useful in connection with all its operations." Given the wording of this clause, the lease could be used for anything, including a used car lot, and still be in compliance with the agreement.

Further, under an environmental protection clause the landowner (lessor) has restrictions placed on his use of agricultural chemicals. If the lessor, in spraying his crop, were to allow spray to enter the leased area, he would then be in breach of contract unless he had previously obtained written permission from the lessee. The lessor was also obligated to give notice to the lessee should he use pesticides on the said lands (the balance of the quarter containing the surface lease).

Also worthy of comment were clauses under the heading "Reduction of annual rate." These clauses sought to circumvent the relevant sections of the *Surface Rights Act* and other land use legislation and allow the lessee to unilaterally terminate annual compensation once a reclamation certificate had been applied for. Further, the lessee, once they had removed their above-ground structures from the surface lease area, could unilaterally reduce the rate of annual compensation to the lessor before applying for a reclamation certificate.

A final clause that gave pause for thought was one that allows the lessee to allow other persons or entities to use their access road for any and all purposes without first obtaining permission from, or giving notice to, the lessor.

All in all, it is not a surface lease that we would encourage a landowner to sign. In fact, it was a document that harkens back to a period, years ago, when the sophistication and knowledge of landowners regarding surface rights was not what it is today.

This document brings to mind the sage advice that one must be forever vigilant.